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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/302,336	04/29/1999	RICHARD FRANCIS AVERILL	54839USA3A	6751

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EXAMINER
RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
2175	18

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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See Examiner's Answer as Attached

Sam Rimell
Primary Examiner
Art Unit: 2175

PTO-90C (Rev.3-98)

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 18

Application Number: 09/302,336
Filing Date: April 29, 1999
Appellant(s): AVERILL ET AL.

Carolyn V. Peters
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 23, 2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant asserts that the claims will stand or fall together. Examiner agrees with this assertion.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

(1) "From Diagnosis Codes to Diagnostic Cost Groups": Obtained from www.dxcg.com and cited in Examiner's Office Action of October 9, 2001. Referred to by Examiner as "DXCG Document". According to "DXCG and Risk Adjustment Bibliography" cited in Examiner's Office action of October 9, 2001, the information in this reference derives from published research dating to 1986.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8, 10 and 12 are rejected under 35 USC 102(b) as being anticipated by DXCG Document.

The reference entitled DXCG Document is four pages of screen shots obtained from DXCG.com. The document includes two sections. The First Section is entitled "From Diagnosis Codes to Diagnostic Cost Groups" and the second section is entitled "How DXCG Models Predict Resource Use".

These articles describe DXCG models used by DXCG, Inc. According to the DXG.com website, these models have been validated in published research dating back to 1986.

As seen on page 1 of the section entitled "From Diagnosis Codes to Diagnostic Cost Groups" the DXCG model starts by obtaining a set of medical care codes, which are the ICD-9-CM standard codes which are well known in the art . These codes are then categorized into major disease categories called "Dx Groups". These major disease categories are then categorized into episode disease categories called "HCCs". Within each HCC, the severity of a particular illness

can be subcategorized. For example, metastatic cancer can be subcategorized as "Neoplasm 1", while benign cancers can be subcategorized as "Neoplasm 8".

There are 118 HCCs and each one can be subcategorized by severity of illness.

Some of the episode disease categories represent chronic conditions, such as cancer. These chronic conditions can be subcategorized, as seen by the neoplasm example above.

The range of neoplasm severity from "Neoplasm 1" to "Neoplasm 8" represents a "leveling matrix" used to adjust the severity of illness for any given episode disease category.

A second set of medical care codes is applied when a subject has a second simultaneous illness. On page 1, the subject has four simultaneous illnesses, and thus four sets of medical codes. Each set of medical codes is further defined into major disease categories and episode disease categories, with each episode disease category having a leveling matrix (levels of severity) for chronic conditions.

As seen on the fourth page of the DXCG document, the episode disease categories (HCCs) are aggregated to define a clinical cost for a particular subject. That cost defines a rating for that particular subject.

On page 4, last paragraph, it is seen that a subject is assigned the most severe clinical risk group for each episode disease category. For example, a subject having both of the illnesses defined by subcategories "Neoplasm 1" and "Neoplasm 2", the subject is assigned the subcategory of "Neoplasm 1", which is the most severe category.

Claims 9 and 11 are allowed.

(11) Response to Argument

Appellant's arguments have been considered.

Appellant argues that: *"The severity categorization used by the HCCs (of the DXCG Document) refers to the relationship between different diseases within a common body system, rather than distinctions made within a specific disease, as claimed in the present invention."* However, this argument is not correct. Within the DXCG document, the severity categorizations refer to severity of a specific disease. In the example given in the Examiner's rationale for rejection, a specific example was given where cancer was the disease under consideration. "Neoplasm 1" was assigned to metastatic cancer, while "Neoplasm 8" was assigned to benign cancer. Clearly, these are levels of distinction being made with a respect to a particular disease (cancer). Furthermore, it is observed that this feature is not specifically claimed. Claim 1 calls for "subdividing at least some of the episode disease categories by severity of illness". There is no statement in any of the claims that calls for *"distinctions made within a specific disease"*, as appellant asserts in the arguments.

Appellant argues that in appellant's invention, the method *"identifies groups of individuals with multiple interacting co-morbid conditions, and which explicitly identifies the severity of illness level"*. This language does not appear in ay of the claims of record which have been examined. The only portion of this language which appears in any of the claims is the phrase "severity of illness level". The remaining language does not appear in the claims, and accordingly, the argument is moot.

Appellant argues that in appellant's invention, the method involves the development of a classification system and *"..then applies that system to historical information for both individual patients and populations to group them according to clinical risks."* This exact language does not appear in any of the claims. However, claim 1 is most similar where it states "..the

classification system is applied to historical information for individuals and populations to group them according to the classification system". Examiner maintains that the DXCG document discloses these exact features. Page 1 of the DXCG document discloses a table where the classification system is applied to an individual 79 year old female patient. Page 2 of the DXCG document refers to "national datasets" and "your datasets" which is referring to the application of the classification system to populations of patients.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sam Rimell
Primary Examiner
Art Unit 2175

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March 3, 2003

Conferees

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